

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 IRONDALE COMMUNITY ACTION NEIGHBORS
4 (ICAN),

5 Petitioners,

6 v.

7
8 JEFFERSON COUNTY,

9
10 Respondent.

CASE NOS. 03-2-0010 and 04-02-
0022

**ORDER ON MOTION FOR
RECONSIDERATION**

11
12 **This Matter** comes before the Board upon the Petitioner's Motion for Reconsideration of
13 this Board's April 9, 2007 Order Finding Continuing Noncompliance and Granting Additional
14 Time for Compliance ("Order").

15
16 **I. ISSUES TO BE DECIDED**

17
18 **A. Should the Board reconsider its April 9, 2007 Order to include a requirement**
19 **for compliance with Conclusion of Law K from the May 31, 2005 Final Decision**
20 **and Order and Conclusion of Law J-1 from the May 30, 2006 Compliance Order**
21 **within the three month compliance schedule established in that recent Order?**

22 **B. Should the three month compliance schedule established in the Board's April**
23 **9, 2007 Order include a requirement to permanently rescind JCC 18.18?**

24
25 **II. DISCUSSION OF THE ISSUES**

26 **Position of the Parties**

27
28 Petitioner ICAN asks the Board to reconsider its April 9, 2007 Order that provided the
29 County with additional time for compliance with those issues identified in the Board's May
30 31, 2005 Final Decision and Order and May 30, 2006 Compliance Order.

1 Petitioner argues that Conclusion of Law K, from the May 31, 2005 Final Decision and
2 Order, regarding the “incorporation of future amendments to the PUD’s water supply into the
3 County’s comprehensive plan without opportunity for review and comment”, while
4 referenced in the April 9, 2007 Order was not made part of the three month compliance
5 schedule, as Petitioner argues it should be.
6

7 Petitioner also notes that Conclusion of Law J-1 from the May 30, 2005, Compliance Order
8 (“The County has not updated all parts of its plan to reflect the 2004 to 2024 planning
9 period”) is an item of compliance that should be included in the three month compliance
10 schedule.
11

12 Finally, ICAN requests that the Board include a direction to the County to rescind, by other
13 than an interim ordinance, the current development regulations for the Irondale\Port
14 Hadlock UGA, with this item being reviewed in the three month compliance schedule.
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17 In its response, Jefferson County asks the Board to deny the Motion for Reconsideration to
18 the extent it asks the Board to order the County to permanently rescind urban development
19 regulations in the proposed UGA.¹ The County notes that on March 12, 2007 it enacted
20 another interim ordinance confirming the rescission of the urban regulations and that it held
21 a public hearing on that ordinance on March 12.²
22

23 **Board Discussion**

24 A motion for reconsideration, pursuant to WAC 242-02-832(2), shall be based on at least
25 one of the following grounds:
26

- 27 (a) Errors of procedure or misinterpretation of fact or law, material to the party
28 seeking reconsideration;
29 (b) Irregularity in the hearing before the board by which such party was prevented
30 from having a fair hearing; or
31 (c) Clerical mistakes in the final decision and order.

32 ¹ Jefferson County's Response to ICAN's Motion for Reconsideration, at 1.

² Id. at 2.

1 **A. Compliance with Conclusions of Law K from the May 31 Final Decision and**
2 **Order and J-1 from the May 30, 2006 Compliance Order**

3 In our May 30, 2006 Compliance Order, the Board concluded that “A consistent planning
4 period throughout the comprehensive plan is necessary to ensure that ‘each part of the plan
5 should be integrated with all other parts and that all should be capable of implementation
6 together’ WAC 242-02-500.”³ In Conclusion of Law F of that same order, we held that “The
7 failure to use the same planning period throughout the County’s comprehensive plan is
8 clearly erroneous and violates RCW 36.70A.070.”⁴

10 In its Statement of Actions Taken and Request for Additional Time, the County noted that,
11 with regard to minor inconsistencies in the comprehensive plan and development
12 regulations, these flaws had been corrected and were moving forward for approval. These
13 corrections included “amending tables and figures to reflect a consistent 20 year planning
14 horizon ending in 2024” and “removing the language from the UGA element which suggests
15 that amendment to the Comprehensive Water Plan for the PUD automatically becomes part
16 of the County’s Comp Plan.”⁵ In the County’s response to ICAN’s objections, the County
17 agreed that “the County should be given three months to implement amendments to the
18 small areas of noncompliance identified by the Hearings Board relating to traffic, water
19 service, population forecast, etc.”⁶ Further, the County noted “it expects to implement the
20 small changes to the Comprehensive Plan this spring (Conclusions of Law G, H, I, J and K
21 from the FDO.)”⁷ Thus, it appears that the County is in agreement that it was appropriate to
22 include compliance with items J-1 and K within the three month compliance period.
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30 ³ May 30, 2006 Compliance Order, at 23.

31 ⁴ Id. at 33.

32 ⁵ Jefferson County’s Statement of Actions Taken, at 6.

⁶ Jefferson County’s Response to ICAN’s Objections and Motion for Invalidity and Sanctions, at 2.

⁷ Id. at 3.

1 The Board agrees that the failure to require the County to address Conclusions of Law J-1
2 and K in the three month compliance period was an oversight. It was an error within the
3 scope of WAC 242-02-832(2)(c) to fail to do so.
4

5
6 **B. Permanent Rescission of JCC 18.18**

7 Turning to the issue of whether the Board should impose upon the County the requirement
8 to permanently rescind JCC 18.18 within the three month compliance period, we reach a
9 different conclusion.

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11 The County has stated that “the County is enacting a new interim ordinance on March 12,
12 2007 reinstating the rural DR’s and at that same time issuing a public notice, so that the
13 requirement of holding a public meeting within 60 days will be satisfied.”⁸ ICAN argues that
14 the Board must order the County to rescind the urban development regulations in JCC
15 18.18. We disagree.
16

17 The Board has never ordered the County to rescind its urban development regulations; we
18 have found that the County did not comply with the GMA by allowing urban levels of
19 development to occur before urban services are available. (Conclusion of Law D, May 21,
20 2005 Final Decision and Order.) The method for achieving compliance on this point is up to
21 the County.⁹ In this latest hearing, the question before the Board was not whether the
22 County has achieved compliance on this issue – the County has appropriately not
23 requested a finding of compliance based on the adoption of an interim ordinance – but
24 whether Petitioners’ motions for invalidity and sanctions should be granted. The County
25 adopted the interim ordinance making the applicable development standards within the Port
26 Hadlock/Irondale UGA boundaries rural to assure that urban levels of development do not
27 take place while the County continues to work on its sewer plan. This is an appropriate step
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31 ⁸ Id. See, also, Jefferson County’s Response to Motion for Reconsideration, at 2.

32 ⁹ See *Port Townsend et al v. Jefferson County WWGMHB* Case No. 94-2-0006 (Compliance Order, December 14, 1994)

1 to take as compliance is being achieved, and obviates the need for further determinations of
2 invalidity and/or sanctions.

3 4 III. ORDER

5 Having reviewed the arguments of Petitioner and Respondent, the Board concludes that it
6 was an error within the scope of WAC 242-02-832(2) to fail to specify that the County must
7 address items J-1 of the May 30, 2006 Compliance Order and K of the May 31, 2005 Final
8 Decision and Order within the three month compliance period. The Board's April 9, 2007 is
9 hereby amended to require compliance with these items within the three month schedule
10 set out in that Order.
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13 With regard to the request that the Board amend the April 9, 2007 Order to require
14 permanent rescission of JCC 18.18 within the three month compliance period, this Board
15 finds no basis for reconsideration of its Order to impose that requirement and that portion of
16 the motion for reconsideration is hereby denied..
17

18 Entered this 19th day of April 2007.
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21 _____
22 James McNamara, Board Member

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24 _____
25 Holly Gadbow, Board Member

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27 _____
28 Margery Hite, Board Member

29 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

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31 **Judicial Review. Any party aggrieved by a final decision of the Board may appeal the**
32 **decision to superior court as provided by RCW 36.70A.300(5). Proceedings for**
judicial review may be instituted by filing a petition in superior court according to the

1 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
2 Enforcement. The petition for judicial review of this Order shall be filed with the
3 appropriate court and served on the Board, the Office of the Attorney General, and all
4 parties within thirty days after service of the final order, as provided in RCW
5 34.05.542. Service on the Board may be accomplished in person or by mail, but
6 service on the Board means actual receipt of the document at the Board office within
7 thirty days after service of the final order. A petition for judicial review may not be
8 served on the Board by fax or by electronic mail.

9 Service. This Order was served on you the day it was deposited in the United States
10 mail. RCW 34.05.010(19)